



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R02-OAR-2016-0478; FRL-9952-49-Region 2]**

#### **Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review; Infrastructure State Implementation Plan Requirements**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) amending existing nonattainment New Source Review (NNSR) and attainment New Source Review (Prevention of Significant Deterioration of Air Quality, PSD) program requirements. Specifically, the SIP revision includes new requirements pertaining to the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometer (PM<sub>2.5</sub>) and the regulation of Greenhouse Gases (GHGs) under New York's Part 231, "New Source Review for New and Modified Facilities;" Part 201, "Permits and Registrations;" and amendments to Part 200, "General Provisions," of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) which will make the SIP consistent with existing federal requirements. The EPA is also proposing to approve certain elements of New York SIP revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2008 lead (Pb), 2008 ozone, and 2010 sulfur dioxide (SO<sub>2</sub>) national ambient air quality standards

(NAAQS).

**DATES:** Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID number **EPA-R02-OAR-2016-0478**, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

Throughout this document, references to “EPA,” “we,” “us,” or “our,” are intended to mean the Environmental Protection Agency. The supplementary information is arranged as follows:

I. What Is Being Addressed in This Document?

II. What Is the Background for This Action?

III. What Is EPA's Analysis of New York's NSR Rule Revisions?

IV. How Has the State Addressed Elements of the Section 110(a)(1) and (2) "Infrastructure" Provisions?

V. What Action Is EPA Proposing To Take?

VI. Incorporation By Reference

VII. Statutory and Executive Order Reviews.

## **I. What Is Being Addressed in This Document?**

On October 12, 2011, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA Region 2 a new set of revisions to the New York State Implementation Plan (SIP). This submittal consists of revisions to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) Part 231, New Source Review for New and Modified Facilities; 6 NYCRR Part 200, General Provisions; and 6 NYCRR Part 201, Permits and Certificates. New York undertook this rulemaking to comply with EPA's May 16, 2008 NSR final rule for the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM<sub>2.5</sub>). Also, the revisions implement EPA's October 20, 2010 final rule that establishes the PM<sub>2.5</sub> increments, significant impact levels, and significant monitoring concentrations. This proposed rulemaking implements PM<sub>2.5</sub> provisions that were not previously included in the November 17, 2010 EPA SIP approval of Part 231. This SIP revision also

incorporates provisions that conform to EPA's June 3, 2010 final rule for Greenhouse Gases (GHGs) under its PSD and Title V programs, establishing major source applicability threshold levels for GHG emissions and other conforming changes such as the establishment of global warming potential values for calculating CO<sub>2</sub> equivalents under New York's PSD and Title V programs.

The EPA is also proposing to approve certain elements of New York SIP revisions as meeting CAA section 110(a) requirements for the 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub> NAAQS. NYSDEC submitted a SIP for the 2008 Pb NAAQS on October 13, 2011, as supplemented on February 24, 2012; for the 2008 ozone NAAQS on April 4, 2013; and for the 2010 SO<sub>2</sub> NAAQS on October 3, 2013.

## **II. What Is the Background for This Action?**

On November 17, 2010, EPA granted a partial approval to revisions of the New York SIP for 6 NYCRR Parts 200, 201 and Part 231 submitted by the NYSDEC on March 3, 2009. 75 FR 70140. This partial approval was issued with the caveat that EPA was taking no action at the time on (1) the PSD permitting threshold provisions to the extent that those provisions may require permits for sources of GHG emissions that equal or exceed the 100/250 tons per year (tpy) GHG levels but are less than the thresholds identified in EPA's final Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010); and (2) the PSD significance level provisions of New York's rule to the extent that those provisions may treat as significant GHG emissions increases that are less than the thresholds identified in the final Tailoring Rule. *Id.* We granted partial approval, in part, because in its August 11, 2010 letter to EPA, New York State confirmed to us that they

have authority to regulate GHGs without any additional rulemaking or other administrative action. Subsequently, on October 12, 2011 New York submitted a SIP revision request which makes New York's authority to regulate GHG more explicit in the regulation itself. In addition, New York's SIP revision request addresses additional PM<sub>2.5</sub> requirements that were not included in the November 17, 2010 EPA SIP approval.

Under CAA sections 110(a)(1) and (2), states are required to submit SIPs that provide for the implementation, maintenance and enforcement of the NAAQS. The EPA refers to these types of SIP submissions as the "infrastructure" SIPs. States must make infrastructure SIP submissions within 3 years after the promulgation of a new or revised NAAQS. On November 12, 2008 (73 FR 66964), EPA promulgated a new rolling 3-month average NAAQS for Pb, which is 0.15 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) maximum not to be exceeded. On March 27, 2008 (73 FR 16436), EPA revised the level of the 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm. On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for SO<sub>2</sub> at a level of 75 ppb, based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.

This proposed action pertains only to the portions of the infrastructure SIPs submitted for the 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub> NAAQS pertaining to CAA sections 110(a)(2)(C); 110(a)(2)(D)(i)(II) prong 3 (PSD); and 110(a)(2)(J). EPA had previously approved most elements of New York's infrastructure SIP for the 2008 Pb NAAQS as fully meeting the requirements of section 110(a). See, EPA's final rule "Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 2008 Lead NAAQS," 80 FR 30939 (June 1, 2015). However, EPA had deferred taking final action on the lead SIP with respect to

110(a)(2)(C), 110(a)(2)(D)(i)(II) prong 3, and 110(a)(2)(J) elements until EPA approved, or simultaneously approved, PM<sub>2.5</sub> requirements for New York's PSD program. EPA will address the other elements of the infrastructure SIPs for the 2008 ozone, and 2010 SO<sub>2</sub> NAAQs in another action.

EPA's general approach to the review of infrastructure SIP submittals can be found in the December 15, 2014 (79 FR 74046) proposal to approve New York's 2008 Pb infrastructure SIP, and will not be repeated here. Both the proposed rule and final rules for the 2008 Pb NAAQS can also be found in the docket of this rulemaking.

### **III. What Is EPA's Analysis of New York's NSR Rule Revisions?**

A number of developments have arisen since EPA's receipt of the SIP revision package that has affected EPA's review of the 6 NYCRR Part 231 SIP revision. These developments are:

- a) On July 21, 2011, then Assistant Administrator Gina McCarthy issued a memorandum entitled "Revised Policy to Address Reconsideration of Interpollutant Trading Provisions for Fine Particles (PM<sub>2.5</sub>).” See <http://www.epa.gov/sites/production/files/2015-07/documents/pm25trade.pdf>. The memorandum stated that under the EPA's revised policy, the interpollutant ratios contained in the preamble to the 2008 final rule will no longer carry an EPA presumptive approval status. Accordingly, if a state wishes to implement interpollutant trading, the state will be expected to develop its own separate PM<sub>2.5</sub> precursor offset ratios that are demonstrated to be suitable for addressing the particular precursor's relationship with ambient PM<sub>2.5</sub> concentrations for 24-hour and annual averaging periods that are causing violations in that nonattainment area.

Therefore, since New York has not conducted and included such a demonstration for the PM<sub>2.5</sub> precursor offset ratios in the Part 231 SIP submittal, these offset ratios cannot presumptively be approved into the SIP.

- b) On January 22, 2013, the United States Court of Appeals for the District of Columbia granted an EPA request to vacate and remand to the EPA portions of two PSD regulations, promulgated in 2010. These two regulatory provisions are the Significant Impact Levels (SILs) for PM<sub>2.5</sub> promulgated under 40 CFR 52.21(k)(2) and 40 CFR 51.166(k)(2) and the PM<sub>2.5</sub> Significant Monitoring Concentration (SMC) promulgated under 40 CFR 52.21(i)(5)(i)(c) and 40 CFR 51.166(i)(5)(i)(c). On December 9, 2013, the EPA issued a final rule vacating these two elements and subsequently issued interim guidance on May 20, 2014 entitled “Guidance for PM<sub>2.5</sub> Permit Modeling.” See [http://www3.epa.gov/ttn/scram/guidance/guide/Guidance\\_for\\_PM25\\_Permit\\_Modeling.pdf](http://www3.epa.gov/ttn/scram/guidance/guide/Guidance_for_PM25_Permit_Modeling.pdf). The EPA is currently drafting regulatory changes to address these two aspects of the PSD rule.
- c) On June 23, 2014, the Supreme Court of the United States issued a decision addressing the application of stationary source permitting requirements to greenhouse gases. *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency*, 134 S.Ct. 2427 (2014). In this decision, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD or title V permit. The Supreme Court also said that the EPA

could continue to require that PSD permits otherwise required, based on emissions of conventional pollutants, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). See the EPA guidance dated December 19, 2014 on this topic at <http://www.epa.gov/sites/production/files/2015-07/documents/201412step2.pdf>

In light of the above developments, the NYSDEC on July 28, 2016 requested the EPA to withdraw specific regulatory language that deals with the above provisions from the SIP submittal. Removal of the above provisions from the SIP submittal request is appropriate since EPA has or is in the process of developing additional guidance/regulations that will address the above issues with a timetable as to when the SIP revisions are due from the States to EPA. The specific provisions of 6 NYCRR Parts 201 and 231 that New York has asked the EPA to be withdrawn are:

- 1) PM<sub>2.5</sub> Inter-pollutant trading provisions codified in both 6 NYCRR 231-5.5 (b)(3) and 231-6.6 (b)(3) as follows:

*An emission offset of PM-2.5 (including its precursors SO<sub>2</sub> and NO<sub>x</sub>) must at least equal (offset ratio of one to one or greater) the corresponding facility potential to emit or project emission potential of the same pollutant (subsequent to application of LAER), as appropriate, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required to provide a net air quality benefit as set forth in this section. **Inter-pollutant trading may be used for offsetting direct emissions of PM-2.5 (including its precursors SO<sub>2</sub> and NO<sub>x</sub>). Inter-pollutant offset ratios are as follows: one ton PM-2.5 offsets 200 tons NO<sub>x</sub>, one ton PM-2.5 offsets 40 tons SO<sub>2</sub>, 200 tons NO<sub>x</sub> offsets one ton PM<sub>2.5</sub> and 40 tons SO<sub>2</sub> offsets one ton PM-2.5. The use of NO<sub>x</sub> and SO<sub>2</sub> to offset one another is not allowed.***

NYSDEC has withdrawn the bold and underlined portion.



2) 231-10.1(d) – General Provisions for Emission Reduction Credits (ERCs)

*An ERC, to be used as an offset, must be the same regulated NSR contaminant as the emission increase requiring the ERC, **except for PM-2.5. An ERC of PM-2.5 (including its precursors SO<sub>2</sub> and NO<sub>x</sub>) may be used as an offset for direct emissions of PM-2.5. In addition, direct emissions of PM-2.5 can be used to offset emission of its precursors. These emission offsets must follow the ratio requirements of section 231-5.5(b)(3) and 231-6.6(b)(3) of this Part.***

NYSDEC has withdrawn the bold and underlined portion.

3) 231-12.4(a)(1) Exemption and waiver from onsite (i.e., site specific) air quality monitoring

***PM<sub>2.5</sub> ----- 4ug/m<sup>3</sup>, 24-hr average;***

NYSDEC has withdrawn this PM<sub>2.5</sub> Significant Monitoring Concentration (SMC) value of 4 ug/m<sup>3</sup> from the New York SIP submission and has temporarily replaced with a value of 0 (zero) until regulatory changes are made.

4) 231-12.7 Significant impact levels for facilities located in attainment areas. Specifically, for PM<sub>2.5</sub>

***PM<sub>2.5</sub> annual average: 0.3 ug/m<sup>3</sup>***

***PM<sub>2.5</sub> 24-hr average: 1.2 ug/m<sup>3</sup>***

NYSDEC has withdrawn these PM<sub>2.5</sub> SILs.

5) 231-13.5 Table 5 – Major facility thresholds for attainment and unclassified areas.

***\*Greenhouse Gases: 100/250 tpy and 100,000 tpy (measured as CO<sub>2</sub> equivalents).***

***\*Except for Step 2 GHG PSD sources which are major for GHG only.***

NYSDEC has withdrawn these GHG major source thresholds for sources that are major for GHG only.

6) a) Definitions in 201-2.1(b)(21)(i)

*Except as otherwise expressly provided in this paragraph, a stationary source, source, or facility that directly emits or has the potential to emit, 100 tons per year (tpy) or more of any air pollutant or air contaminant regulated under the act except for greenhouse gases*

(including any stationary source, source or facility which emits only fugitive emissions, of any such pollutant or contaminant, as determined through regulation by the administrator). **For greenhouse gases, a stationary source, source, or facility that directly emits or has the potential to emit 100 tpy or more, and 100,000 tpy or more of CO<sub>2</sub> equivalents.** Fugitive emissions shall not be considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories identified in subparagraph (iii) of this paragraph.

b) Definitions in 201-2.1(b)(21)(v)

For purposes of determining the applicability of Part 231 of this Title with respect to prevention of significant deterioration (PSD) requirements only, a stationary source, source, or facility located in an attainment area of the State where the stationary source, source, or facility potential to emit of any attainment contaminant regulated under the act, except for greenhouse gases, equals or exceeds 250 tpy, or equals or exceeds 100 tpy if the stationary source, source, or facility belongs to one of the source categories listed in clauses (a) through (z) of subparagraph (iii) of this paragraph. **For greenhouse gases, a stationary source, source, or facility that directly emits or has the potential to emit 100 or 250 tpy or more, as applicable, and 100,000 tpy or more of CO<sub>2</sub> equivalents.** Fugitive emissions shall not be considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories listed in subparagraph (iii) of this paragraph.

NYSDEC has withdrawn the bold and underlined portions.

#### IV. How Has the State Addressed Elements of the CAA Section 110(a)(1) and (2) "Infrastructure" Provisions?

New York's submittals demonstrate how the State, where applicable, has a plan in place that meets the requirements of CAA Section 110 for certain elements for the 2008 Pb, 2008 ozone and 2010 SO<sub>2</sub> NAAQS. The plans reference the current New York SIP, the New York Codes of Rules and Regulations (NYCRR), the New York Environmental Conservation Law (ECL) and the New York Public Officer's Law (POL). The NYCRR, ECL and POL referenced in the submittal are publicly available. New York's SIP can be found at 40 CFR 52.1670 and is posted on the Internet at: [http://www.epa.gov/region02/air/sip/ny\\_reg.htm](http://www.epa.gov/region02/air/sip/ny_reg.htm).

As discussed in the following sections, EPA has reviewed and evaluated elements and sub-elements of New York's Infrastructure SIPs for 2008 Pb, 2008 Ozone, and 2010 SO<sub>2</sub> for CAA Section 110(a)(2)(C); 110 (a)(2)(D)(i)(II) [PSD (Prong 3)]; and 110(a)(2)(J).

**Element 110(a)(2)(C): Program for enforcement of control measures**

Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet PSD of Air Quality and minor source new source review.

New York's Infrastructure SIP submittals for 2008 Pb, 2008 ozone and 2010 SO<sub>2</sub> NAAQS reference New York's Environmental Conservation Law (ECL) § 19-0305, which provides New York with the authority for the enforcement of all control measures that have been adopted into the SIP. New York also references the State's PSD and Nonattainment New Source Review (NNSR) permitting program contained in 6 NYCRR Part 231, "New Source Review for New and Modified Facilities," and the State's permitting program contained in 6 NYCRR 201, "Permits and Certificates." EPA approved New York's PSD and NNSR program into the SIP on November 17, 2010 (75 FR 70140). New York's minor new source review program is also regulated under Part 201.

EPA has reviewed and evaluated New York's Infrastructure SIP for the 2008 Pb, 2008 ozone and 2010 SO<sub>2</sub> NAAQS with respect to the requirements of element C.

EPA concludes that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced for the 2008 Pb, 2008 ozone and 2010 SO<sub>2</sub> NAAQS. Under §19-0311 of the ECL, New York has the authority to establish a permitting program. New York's SIP-approved program under Part 231 includes both PSD permitting requirements, which regulate major sources in attainment areas, and Nonattainment New Source Review requirements, which regulate major sources located in nonattainment areas. New York's Part 231 includes permitting requirements for Pb, SO<sub>2</sub> and the precursors of ozone (i.e., nitrogen oxides and volatile organic compounds). New York's permitting regulations are set forth in 6 NYCRR Part 201, "Permits and Certificates." Major sources of air pollution are covered by State Facility permits (Subpart 201-5) and Title V permits (Subpart 201- 6). In addition, New York has implemented a permitting program for minor sources of air pollution; these sources are covered by minor facility registrations (6 NYCRR Subpart 201-4).

New York's program ensures that all applicable PSD requirements are included in PSD permits and are incorporated into title V operating permits, and that all federally-enforceable requirements are applied and enforced. The State's PSD permitting requirements in Part 231 regulate Pb, SO<sub>2</sub>, and the precursors of ozone. The PSD portion of Part 231 regulates the construction of proposed new or modified facilities that are required to demonstrate in their permit application that allowable emission increases from the facilities, in conjunction with all other applicable emission increases or reductions (including secondary emissions), would not, among other things, cause or significantly contribute to air pollution in violation of any NAAQS

or increment in any air quality control region. Since Pb, SO<sub>2</sub>, and ozone are NAAQS, the PSD provisions of Part 231 are applicable.

Section 110(a)(2)(C) is applicable to all NSR pollutants subject to regulation under the CAA. See, e.g., CAA section 165(a)(4). As mentioned in section II, above, and as further described in EPA's final rule approving elements of the New York Lead Infrastructure SIP<sup>1</sup>, EPA had deferred taking final action approving 110(a)(2)(C) (as well as 110(a)(2)(D)(i)(II) prong 3, and 110(a)(2)(J)) until EPA approved, or simultaneously approved, PM<sub>2.5</sub> requirements for New York's PSD program. Because the scope of 110(a)(2)(C) is comprehensive (covering all pollutants subject to regulation under the CAA, including GHG), a fully approved comprehensive PSD program addressing all regulated NSR pollutants is needed in order to approve the infrastructure SIP for any one pollutant. As described in section III of this rulemaking, the NYSDEC has requested to withdraw specific language from its SIP submittal that had affected EPA's review of the 6 NYCRR Part 231 SIP revision. Upon final approval of the revisions to 6 NYCRR Part 231 into the SIP, New York will have addressed all regulated pollutants.

EPA proposes to find that the State has adequate authority and regulations to ensure the enforcement of emission limits and control measures for the 2008 Pb, 2010 SO<sub>2</sub> and 2008 ozone NAAQS. EPA also proposes to find that New York has met the requirements of 110(a)(2)(C) regarding regulation of minor sources and minor modifications for the 2008 Pb, 2008 ozone and 2010 SO<sub>2</sub> NAAQS.

**Sub-Element 110(a)(2)(D)(i)(II) Prong 3: Interstate Transport, PSD**

Section 110(a)(2)(D) of the Clean Air Act is divided into two subsections: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). The first of these, 110(a)(2)(D)(i), in turn, contains four “prongs” the first two of which appear in 110(a)(2)(D)(i)(I) and the second two of which appear in 110(a)(2)(D)(i)(II). The two prongs in 110(a)(2)(D)(i)(I) require New York’s SIP to contain adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in any other state with respect to any primary or secondary NAAQS (prong 1), or interfere with maintenance by any other state with respect to any primary or secondary NAAQS (prong 2). The two prongs in 110(a)(2)(D)(i)(II) prohibit any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Subsection 110(a)(2)(D)(ii) addresses interstate and international pollution abatement, and requires SIPs to include provisions insuring compliance with sections 115 and 126 of the CAA, relating to interstate and international pollution abatement.

In this action, EPA is proposing to approve 110(a)(2)(D)(i)(II)(prong 3) for the 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub> NAAQS. EPA has previously taken action on 110(a)(2)(D)(i)(I)(prongs 1 and 2) and 110(a)(2)(D)(i)(II)(prong 4) for 2008 Pb. EPA has

proposed action on 110(a)(2)(D)(i)(I)(prongs 1 and 2) and 110(a)(2)(D)(i)(II)(prong 4) for the 2008 ozone NAAQS, and will finalize in a separate rulemaking. EPA will also address 110(a)(2)(D)(i)(I)(prongs 1 and 2) and 110(a)(2)(D)(i)(II)(prong 4) for the 2010 SO<sub>2</sub> NAAQS in a separate rulemaking.

To satisfy section 110(a)(2)(D)(i)(II), prong 3, New York relies on its PSD program to prevent significant deterioration of air quality within other states. New York has affirmed that the program remains in effect and continues to apply for 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub>. As discussed in the preceding section regarding 110(a)(2)(C), a state's PSD program must address all pollutants subject to regulation under the CAA. Upon final approval into the SIP of this proposed approval of the revisions to 6 NYCRR Part 231, New York will have addressed all regulated pollutants.

**Element 110(a)(2)(J) Consultation with government officials, public notification, PSD, and Visibility:**

Section 110(a)(2)(J) requires states to have a plan that meets the applicable requirements of CAA section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to significant deterioration and visibility protection).

Section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121 relating to consultation. In December 2006, New York established a SIP Coordinating Council consisting of senior policy representatives from 19 state agencies and authorities, as well as a SIP Task Force consisting of officials from 37 local governments and

designated organizations of elected officials. New York has also participated in the consultation process for Regional Haze (40 CFR 51.308). EPA proposes to find that the 110(a) submittals from New York meet the requirements of 110(a)(2)(J) for consultation with government officials for 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub>.

Section 110(a)(2)(J) further requires states to notify the public if the NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. New York maintains an Air Quality website<sup>2</sup> for reporting daily air quality to the public, including current air quality status, air quality forecasts, monitoring information, reports and pollutant health effects related to air quality readings. New York posts warnings on the above-referenced website and issues press releases to local media outlets if dangerous conditions are expected to occur. In the case of a predicted or forecasted air quality exceedance, the public is urged to follow energy-saving and pollution-reducing steps such as limiting the use of appliances and carpooling. EPA proposes to find that the 110(a) submittals from New York meet the requirements of 110(a)(2)(J) for public notification for 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub>. Section 110(a)(2)(J) also requires states to meet applicable requirements of Part C related to PSD and visibility protection. The approvability of a state's PSD program in its entirety is essential to approvability of the PSD portion of this element. As discussed previously concerning approvability of 110(a)(2)(C) and 110(a)(2)(D)(i)(II) prong 3, a state's PSD program must address all NSR pollutants subject to regulation under the CAA. Upon final approval into the SIP of this proposed approval of the revisions to 6 NYCRR Part 231, New York will have addressed all regulated pollutants for PSD. With respect to the visibility component of 110(a)(2)(J), EPA



believes that the visibility protection requirements are not "applicable requirements" within the meaning of section 110(a)(2)(J) and that the SIP is not required to be revised with respect to visibility protection merely due to promulgation of, or revision to, these NAAQS. Regardless, New York submitted and EPA approved New York's Regional Haze SIP. 77 FR 51915 (Aug. 28, 2012). EPA proposes to find that the 110(a) submittals from New York meet the requirements of 110(a)(2)(J), for PSD, for 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub> NAAQS.

## **V. What Action Is EPA Proposing To Take?**

As requested by New York, EPA is proposing to withdraw the above specified regulatory sections of 6 NYCRR Parts 201 and 231 from EPA's review of the SIP submittal. EPA is proposing to approve into the SIP the remaining revisions to 6 NYCRR Part 200, 6 NYCRR Part 201 and 6 NYCRR Part 231 which became effective under NYS law on October 15, 2011, and were submitted by the State of New York to EPA on October 12, 2011. Specifically, EPA is proposing to approve the remaining revisions of subparts 200.1 and 200.9, as effective on October 15, 2011, and subpart 201-2, as effective October 15, 2011. EPA is also proposing to approve the remaining revisions to 6 NYCRR Part 231, as effective on October 15, 2011. EPA is also proposing to approve New York's infrastructure SIP submittals for 2008 Pb, 2008 ozone, and 2010 SO<sub>2</sub> for 110(a)(2) elements and sub-elements, as follows: 110(a)(2)(C), 110(a)(2)(D)(i)(II) prong 3, and 110(a)(2)(J).

## **VI. Incorporation By Reference**

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<sup>2</sup> <http://www.dec.ny.gov/chemical/34985.html>

In this rule, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference revised versions of 6 NYCRR Part 200, 6 NYCRR Part 201 and 6 NYCRR Part 231, which were discussed in section III above, and became effective under NYS law on October 15, 2011, and were submitted by the State of New York to EPA on October 12, 2011.

The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

## **VII. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 6, 2016.

Judith A. Enck,  
Regional Administrator,  
Region 2.